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THE JUDICIAL APPOINTMENTS ADVISORY

COMMITTEE

INTERIM REPORT

SEPTEMBER 1990

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Persons wishing to make suggestions about the procedures, selection criteria and the future of the Judicial Appointments Advisory Committee may forward their written comments to:

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The Judicial Appointments Advisory Committee,
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I: INTRODUCTION

The Judicial Appointments Advisory Committee was established in December, 1988 as a three-year pilot project. As it approaches its third and final year as a project, the Committee felt that it should give a public account of its record to date. This report should be of assistance to all who are interested in the quality of justice in Ontario, in assessing the Committee, and in considering whether, in its present or some modified form, it should become a permanent component of the administration of justice in the province. The report may also be of interest to those in other jurisdictions who have adopted or are considering similar reforms of their judicial appointment systems.

Phase I of Court Reform was implemented on September 1, 1990. This report was being drafted at that time. The committee would like to clarify the court levels to which provincial judges were appointed as a result of the committee's recommendations. Prior to the implementation of Court Reform, the committee made recommendations for provincial judges' appointments to the Provincial Court (Criminal Division) and the Provincial Court (Family Division). With the implementation of Court Reform, the committee's recommendations will be for provincial judges of the Ontario Court of Justice (Provincial Division). In this report, any reference made prior to September 1, 1990 is in relation to Provincial Court (Criminal and Family Divisions). Any such reference after September 1, 1990 would relate to the newly structured Ontario Court of Justice (Provincial Division).

II: ESTABLISHMENT AND MANDATE

The establishment of Ontario's Judicial Appointments Advisory Committee was announced in the Ontario Legislature by the Honourable Ian Scott, the Attorney General for Ontario, on December 15, 1988. The Committee's mandate, Mr Scott said, was:¹

First, to develop and recommend comprehensive, sound and useful criteria for selection of appointments to the judiciary, ensuring that the best candidates are considered; and second, to interview applicants selected by it or referred to it by the Attorney General and make recommendations.

The judiciary referred to by Mr. Scott are the judges who serve in the Ontario Court of Justice (Provincial Division). Under the existing court structure, this is the province's first level trial court. It hears most of the criminal cases tried in the province and conducts preliminary hearings in criminal cases to be tried in higher courts. It also has an extensive jurisdiction in family law, child welfare and young offenders matters.

1. [1988] Ont. Leg. Debates 6835 (15 December 1988).

Mr. Scott told the legislature that the committee would be "lay-dominated". Its members would come from across the province. He hoped that such a committee would "ensure that the justice system reflects the needs, the values and the attitudes of the community as a whole" and that it would "do a great deal to remove any unwarranted ... political bias or patronage in appointments to the judiciary while enhancing community and public involvement and reinforcing confidence in the judiciary and the justice system."

The committee is not established by legislation. It operates as a three-year pilot project. Towards the end of this period, it will have to be assessed to see whether such a committee should be established on a permanent basis.

III: COMMITTEE'S ROLE COMPARED WITH OTHER JURISDICTIONS

The use of advisory committees as a means of improving the process of judicial selection is a reform that has received increasing support across North America over the past half century. The first judicial "nominating commissions" were developed in the United States, beginning with Missouri's adoption of a merit selection plan in 1940. These commissions are now functioning in over thirty states.² In the United States, nominating commissions have been introduced as a reform of state systems for electing judges. Although there are many variations among these commissions, most are composed of judges, lawyers and non-lawyers and have the function of selecting on a non-partisan basis, the best qualified individuals for appointment by the governor and subsequent confirmation by the electorate.

In Canada, bodies advising governments on the appointment of judges take two forms.³ Some function as "review committees" to comment on the qualifications of those who are being considered by the government for appointment. These bodies do not advertise positions or in any other way endeavour to recruit good candidates. Nor do they advise government on who are the best qualified candidates. Their basic role is negative — to weed out candidates who are deemed not to be qualified for judicial office. The other type of advisory committee are those that function as true "nominating committees". These bodies have the more positive function of seeking out and recommending to the government the persons best qualified for appointment.

2. For details, see Allan Ashman and James Alfini: *The Key to Judicial Merit Selection — The Nominating Process* (American Judicature Society, 1974). For up-dated information, see Maria N. Greenstein: *Handbook for Judicial Nominating Commissioners* (American Judicature Society, 1985).

3. For an up-to-date account of judicial appointment systems in Canada, see the Manitoba Law Reform Commission: *The Independence of Provincial Judges* (Winnipeg, 1989), ch. II.

Since 1968, the Ontario Judicial Council has functioned as a review committee for appointments to the Provincial Court. The Council is composed of the Chief Justices and Chief Judges of all Ontario courts, representatives of the bar and two non-lawyers. The Judicial Council's primary function is to serve as a disciplinary body for provincial judges. But the *Courts of Justice Act* also gives the Council a role in the appointment process.⁴ The Act requires the Attorney General to obtain the Council's comments on any person whose name he is proposing to submit to Cabinet for appointment to the Provincial Court. The Ontario Judicial Council continues to play this function alongside the Judicial Appointments Advisory Committee. After the Judicial Appointments Advisory Committee has submitted its short list of recommended candidates to the Attorney General and the Attorney General has selected a person from that list for appointment, he submits that person's name, with supporting material, referred to as the "grey book", to the Judicial Council. The Judicial Council then interviews the individual and comments on her or his suitability for judicial office. Ontario is the only province that uses both a nominating committee and a review committee in its judicial appointment process.

In Alberta, Newfoundland, Saskatchewan and the Northwest Territories, Judicial Councils similar to Ontario's have been given a review function in the appointment process. In some of these jurisdictions, the councils have moved beyond the review function and have come to function more like nominating committees. In 1988, New Brunswick introduced an experimental consultative process whereby the Deputy Minister of Justice submits the names of judicial candidates to a panel of Judicial Appointment Review Advisors made up of judges, lawyers and lay persons who individually evaluate the candidates.

Review committees have also been used at the federal level since 1967. The first such committee was constituted by the Canadian Bar Association. For twenty-one years, the Canadian Bar Association's National Committee on the Judiciary advised the federal Minister of Justice whether persons being considered for appointment to the judiciary by the federal government were "highly qualified", "qualified" or "not qualified". This Committee was replaced in 1988 by a new set of advisory committees established by the federal government in each province and territory. These are five-person committees made up of the provincial or territorial Chief Justice or a judge designated by the Chief Justice, two lawyers — one representing the Canadian Bar Association and the other the local law society — and two persons who are expected to be non-lawyers — one appointed by the federal Minister of Justice and the other by the provincial Attorney General or territorial Minister of Justice. Thus in Ontario now, there is such a federal judicial advisory committee. It is strictly a review committee. Names of persons being considered for appointment to the Federal

4. *Courts of Justice Act*, 1984, S.O. 1984, c. 11, sec. 47, as amended by 1989, c. 55, s. 2.

Court of Canada, the Ontario Court of Appeal, the Ontario Court of Justice (General Division) (formerly the High Court and the District Court) are submitted to it by the Commissioner of Federal Judicial Affairs. The Committee advises the federal Minister of Justice whether these persons are "qualified" or "not qualified".

British Columbia was the first province to establish a nominating committee for judicial selection. In 1974, it transferred this function to its Provincial Council. That Council is composed of three judges, two lawyers and four government appointees. Its role in the judicial appointment process is to seek out the best candidates and submit the names of those whom it finds to be most highly qualified to the Attorney General for British Columbia. By law, the Cabinet can only appoint to the British Columbia Provincial Court persons who have been nominated by the Judicial Council. The Yukon's Judicial Council plays a similar role to British Columbia's. Since 1977, a different kind of nominating committee has operated in Québec. A special *ad hoc* nominating committee consisting of a judge, a lawyer and a non-lawyer is set up for each appointment to the Court of Québec. The committee advertises the vacancy, interviews candidates and submits a short list of the outstanding candidates to the provincial Minister of Justice. If the Minister does not select someone from this list, the regulation governing the procedure requires that the position be re-advertised. Manitoba's Law Reform Commission has recently recommended for that province a nominating committee system similar to Québec's.

Ontario's Judicial Appointments Advisory Committee clearly operates as a nominating committee, not a review committee. Its function is to seek out and recommend the best qualified persons for appointment to the Ontario Court of Justice (Provincial Division). Unlike its counterparts in British Columbia, the Yukon and Québec, Ontario's Judicial Appointments Advisory Committee is not yet established on a formal legal basis. Thus, the Attorney General for Ontario is not legally required to follow the Judicial Appointments Advisory Committee's advice on the names that he should submit to the Cabinet for appointment to the Ontario Court of Justice (Provincial Division). Nevertheless, Mr. Scott, who was Attorney General from the committee's inception until the recent change of government, made it clear that he would follow the Judicial Appointments Advisory Committee's advice and, if he departed from that advice, it would be for reasons for which he would be publicly accountable. As this report will later make clear, Mr. Scott honoured this commitment.

IV: COMPOSITION OF THE COMMITTEE

A distinctive feature of Ontario's Judicial Appointments Advisory Committee is that a majority of its members are neither lawyers nor judges. No other

Canadian nominating or review committee has a lay majority. In the United States, however, non-lawyers constitute a majority on nominating commissions in seven states.

As originally constituted, the Judicial Appointments Advisory Committee was a nine-person body made up of six non-lawyers, two lawyers and a judge. The Attorney General appointed the six non-lawyers and one of the lawyers. These appointees were as follows:

- Valerie Kasurak, Windsor
- Denise Korpan, London
- Michele Landsberg, Toronto
- David McCord, Ottawa
- Robert Muir, Kenora
- Peter Russell, Toronto (Chairperson)
- Ben Sennik, North York

The other two members were Judge Robert Walmsley, the Associate Chief Judge of the Provincial Court (Family Division), chosen by the Ontario Judicial Council and Mr. Clay Ruby, a lawyer chosen by the Law Society of Upper Canada.

Profiles of these members and others appointed since then are provided in Appendix 1. As can be seen from these profiles, the membership of the committee represents a wide variety of professional and personal backgrounds.

The first change in the committee's membership occurred in February 1989 when the Benchers of the Law Society of Upper Canada voted eighteen to sixteen to remove Mr. Ruby as their representative. This vote was brought about by allegations that Mr. Ruby was biased against Crown attorneys. The committee objected to the Law Society's action because it questioned the propriety of the treatment of Mr. Ruby. Mr. Ruby was replaced by Mr. Tom Bastedo. Mr. Bastedo, like Mr. Ruby, has been an effective member of the committee.

The composition of the committee changed again in the fall of 1989 when Ms. Michele Landsberg left the committee to take up full-time duties at the Toronto Star. Ms. Landsberg was replaced by Ms. Kay Sigurjonsson, the Deputy Executive Director of the Federation of Women Teachers' Associations of Ontario. At that time, a tenth member was added to the committee, Mr. Donald Good, a lawyer from Kingston and a Council member of the Canadian Bar Association.

At its first meeting, the committee decided that six members would be required to form a quorum. The committee tries as much as possible to have all of its members participate in all of its deliberations and decision-making. Attendance at its meetings has usually been well beyond the quorum and has often included the full committee. As all of the Judicial Appointments Advisory Committee's meetings have taken place in Toronto, given the committee's very heavy work load and the fact that its members receive no compensation other than their travel expenses and are very actively engaged in their business, professional and community activities, consideration was given to dividing the work between two committee panels. This idea, however, was rejected on the grounds that it would detract too much from continuity, consistency and representativeness in the committee's decision-making, especially in this experimental phase of the new pilot project.

V: MINISTRY SUPPORT AND STAFF

The committee conducts its business and keeps its records in the premises of the Ministry of the Attorney General. At first, members of the committee were concerned that meeting at the Ministry offices might compromise the committee's independence. But this has turned out not to be a problem. The committee has not experienced any interference from the Attorney General or his staff. The committee has met with the Attorney General from time to time to discuss general policy matters. Most of the committee's liaison with the Attorney General's office has been conducted through the Minister's special assistants, first Ms. Chris Burton and more recently, Ms. Louise Colussi. The committee is most appreciative of the excellent co-operation it has received from both Ms. Burton and Ms. Colussi.

Within the Ministry, the committee's support staff and records are located in the Office of Judicial Support Services. Ms. Susan Dunn of that office has served as the committee's executive secretary and administrative officer. Ms. Dunn attends all of the committee's business meetings and has the primary responsibility for administering the committee's activities. This has included preparing advertisements, processing hundreds of applications, organizing interview sessions and handling telephone inquiries. In all of this, Ms. Dunn has done a superb job and the committee would like to thank her publicly for the intelligent, conscientious and friendly way in which she has served the committee. Ms. Dunn, in turn, has been ably assisted by Ms. Carol Chan and Ms. Mabel D'Alessandro who have done all of the secretarial and clerical work. Finally, the committee has received excellent help and co-operation from Mr. Keith Norris, the Manager of the Office of Judicial Support Services and his clerical assistant, Ms. Eileen Beattie.

The total expenditures of the committee (exclusive of Ministry staff time) since its inception amount to \$70,640. Most of these expenditures have been for advertising and members' travel and meals.

VI: COMMITTEE ACTIVITIES

The committee spent the first three months of 1989 planning its basic procedures. At these early meetings, the committee decided on the policy of advertising vacancies, designed a personal information form for applicants, struck a sub-committee to work on an interview procedure, agreed on the need to make discreet inquiries about candidates and began to consider and define selection criteria. The policy issue that caused the most discussion was whether the committee should recommend just one person for each vacancy or provide a short list. The committee decided that it would submit a short ranked list of those applicants whom it found to be best qualified for each vacancy.

The committee was advised by the Ministry that it had on file hundreds of names of persons who over the years had indicated an interest in being appointed to the Provincial Court. Because many of these individuals had written to the Attorney General on a confidential basis, the committee felt it should not examine these files. The committee decided, however, that all of these persons should be given an opportunity to apply through the new process that the committee was introducing. Mr. Scott so informed those who had written to him and Mr. Norris wrote to those who had corresponded with previous Attorneys General.

The committee began to put its plans and procedures into action in April 1989 when it advertised five vacancies. Since then, it has placed three more advertisements. Altogether through these four rounds, the committee has submitted recommendations to the Attorney General for twenty-eight Provincial Court judgeships. Seventeen of these were vacancies caused by retirement or resignation and eleven were new positions created under the delay reduction program. The total number of judges on the Ontario Court of Justice (Provincial Division) is 233.

The positions for which the committee has submitted recommendations and the dates they were advertised are as follows:

1. *April-May 1989, five positions:*

- Elliot Lake/Algoma (Criminal), bilingual;
- Norfolk/Simcoe (Criminal);
- Peterborough/ Coburg/Lindsay (Family); and
- Ottawa/Carleton (Criminal), two positions, one bilingual.

2. *July-August 1989, five positions:*
 - London (Criminal);
 - Rainy River/Fort Frances (Criminal/Family); and
 - Toronto (Criminal), three positions.
3. *October-November 1989, thirteen positions:*
 - Barrie (Criminal);
 - Brampton (Criminal), three positions;
 - Dryden (Criminal/Family);
 - Hamilton (Criminal);
 - Kitchener (Criminal);
 - Oshawa (Criminal), two positions;
 - Toronto (Criminal), two positions;
 - Toronto (Family); and
 - St. Catharines (Criminal).
4. *April-May 1990, five positions:*
 - Brockville (Criminal/Family);
 - Morrisburg (Criminal/Family); and
 - Toronto (Criminal), three positions.

The committee made a further recommendation to fill a vacancy that occurred in April 1990 when a judge serving on the Provincial Court (Criminal Division) in Brampton was appointed to the District Court of Ontario. Because the committee had recently interviewed candidates for Brampton vacancies and a serious backlog problem existed in the Brampton Court, the Attorney General asked the committee if it could make a recommendation for this vacancy without an advertisement. The committee agreed that, under these circumstances, it could do so and recommended one of the persons whom it had ranked highly for an earlier vacancy.

The procedures followed by the committee in making its recommendations will be outlined in the next section. As will be seen, these procedures require committee meetings at two stages in each round: first, to agree on the candidates who are to be interviewed and second, to conduct the interviews and decide on the recommendation. At these meetings, the committee has also continued to discuss and modify its procedures and refine its criteria.

The committee's other activity has been communicating with interested groups and the general public about the Judicial Appointments Advisory Committee. As a pilot project, the committee believes that it is important to get as much feed-back as possible about its mandate, its procedures and its criteria. This report is part of that process.

VII: PROCEDURES

Set out below is a step-by-step account of how the committee arrives at its recommendations for filling vacancies. These procedures are still evolving. The committee continues to wrestle with the problem of trying to be fair to every candidate and to give full consideration to all appropriate candidates for each position despite the very large number of applications and the limited amount of time at its disposal. The committee would certainly welcome suggestions on how these procedures might be improved but would ask that those who make suggestions bear in mind the limited amount of time that a volunteer committee can devote to this task.

1. *Notice of Vacancies*

The committee does not begin a selection round until the Attorney General informs the committee's Chairperson that appointments will be made to certain positions. In the past, the Chairperson has usually discussed these positions with the Chief Judge of the Division concerned to ascertain any particular features of the position — for instance, extensive travel or a language requirement — that should be mentioned in the advertisement. Now that the Criminal and Family Divisions have been combined to form the new Provincial Division of the Ontario Court of Justice, these communications will be with Chief Judge Sidney B. Linden who heads the new combined court.

To date, the committee has not been informed of vacancies until they occur or are quite imminent. The committee's procedures for completing a selection round take about three months and following its recommendations, several more weeks are required for selection by the Attorney General, consideration by the Ontario Judicial Council and final decision by the Cabinet. Often this means that judicial vacancies are unfilled for several months resulting in great inconvenience to the public. This problem has been discussed with the Attorney General and Chief Judge Linden. Steps are now being taken to anticipate retirements so that the committee can begin the selection process well in advance of a vacancy.

2. *Advertising and Recruiting Candidates*

Very early in its deliberations, the committee decided that it was important to make the committee and its work as well known as possible. Accordingly, in each round, the positions on which the committee has been asked to make recommendations have been advertised in the *Globe and Mail* or the *Toronto Star*, local newspapers in the communities where the vacancies exist, the *Lawyers Weekly* and the *Ontario Reports*. The last publication is received by all members of the Law Society; the *Lawyers Weekly*, although a national paper available only by subscription, is widely read by most Ontario lawyers. The advertisement

describes the positions that are vacant and the method of application and gives those who are interested a month to submit a completed Personal Information Form. Copies of the four advertisements are included in Appendix 2.

The response to these advertisements has been remarkable. At the time of the first advertisement, the committee received 167 applications. By the end of the second, it had 281 applications on file. In round three, the number went up to 396 and by the end of the fourth round the committee had received completed information forms from 452 candidates. Although some of these applications are from individuals who had applied earlier to the Attorney General and had been notified of the new procedure, a great many are new candidates. The committee was told by a number of candidates whom it subsequently interviewed that it was the advertisement that made them aware of the opportunity of being considered for judicial appointment even though they had no political connections. The committee thinks the advertisements have contributed to making the judiciary accessible to a much wider range of qualified lawyers.

The committee has not relied entirely on advertisements to recruit good candidates. It has contacted organizations and groups in touch with lawyers from sectors of society that in the past have not been well represented on the Provincial Court. This effort reflects one of the committee's criteria printed on every advertisement, namely that the committee believes the composition of the judiciary should better represent the diversity of Ontario's population. Among those contacted are legal aid clinics, women's organizations, Franco-Ontarians, West Indian and native lawyers organizations. The committee feels that it should do more of this in the future. The purpose of these contacts is not to solicit applications from any particular lawyer but to have these organizations encourage lawyers whom they respect to apply.

The human rights legislation does not permit the committee to collect information about the ethnic or racial background of applicants. Thus, the committee does not have data on this aspect in its pool of applicants. It does, however, know that 12 % of the applications have been submitted by women. A recent study reports that 18% of Ontario lawyers are women.⁵ The percentage of lawyers with 10 years professional experience (the statutory requirement) who are women is probably above 12%. When the committee began, only ten (4%) of the provincial judges were women. Although nine (32%) of the twenty-eight appointments resulting from the committee's recommendations were given to women, there is some progress to be made in obtaining applications from an appropriate number of women lawyers.

5. David A.A. Stager: *Lawyers in Canada* (University of Toronto Press, 1990).

3. The Personal Information Form

The committee spent a good deal of effort designing a personal information form for all candidates to complete. It studied forms used in other jurisdictions and got some helpful ideas from these, especially British Columbia's. But it also made its own improvisations. The committee wanted information that is not usually included in the standard *curriculum vitae* or resumé, such as, the nature of the work and the experience gained in the various positions that candidates have held. The committee was also interested in seeing how applicants expressed their reasons for wanting to become a judge and their appraisal of their own qualifications for being a judge. Copies of the English and French versions of the form the Committee is now using are attached as Appendix 3.

Several applicants have preferred to forward their own standard *curriculum vitae* and have refused to complete the committee's form. The committee has refused to consider these candidates. In its view, a person who refuses to fill out the form is not interested enough in the position to warrant consideration. This is especially so when the committee finds that there are so many excellent lawyers who, not only complete the form, but do so very thoughtfully. Besides, it is impossible to compare candidates who have not provided the basic written information that the committee needs.

This last point is important. The Personal Information Form serves more than the function of an application form; it also provides the information on which the committee bases its first "cut" of applicants. This first "cut" is to identify which candidates the committee will investigate further by way of contacting their referees and making other discreet inquiries. At the beginning, the committee hoped that it would have been possible to contact referees and make inquiries about all applicants who met the statutory requirement of ten years' professional legal experience. When, however, the committee was faced with the possibility of making six or seven calls on each of the 167 qualified applicants who responded to the first advertisement, the task seemed beyond it. This became even more evident as the applicant pool grew with subsequent rounds. So the committee decided that, on the basis of the written submissions alone, it would cut down the applicant pool for the next stage of collecting information.

At the end of the month within which candidates must apply, copies of the information forms of all applicants are sent to each committee member. Each member is also sent a list of all applicants from earlier rounds who have indicated that they are willing to serve in the areas currently advertised. The members individually then have ten days to two weeks to read through all relevant applications — for an average round, there will certainly be more than 100 and perhaps closer to 200, each ten pages in length — and develop their own short list of the persons whom they consider to be outstanding candidates for each

position. Generally, each of the members tries to arrive at a short list of five names for each position. These lists are then communicated to the chairperson who collates them onto a master sheet. The committee then applies the "rule of two", which means that any name that appears on two or more lists goes on the list of persons about whom the committee will make further inquiries. This is not a hard and fast rule. If only one member has listed a particular candidate but feels strongly that this candidate should be given further consideration, the name is added to the list. Also, at this stage, the Attorney General has an opportunity to see the full list of candidates and indicate any one who he thinks merits being looked at further by the committee. At the end of this step in the process, the list of candidates to be looked at further will likely contain thirty-five to fifty names.

One further function is served by the Personal Information Form. On the first page, candidates indicate the areas of the province and the division of the court in which they prefer to serve and the additional areas where they are willing to serve. This information is stored in a computer data base so that, whenever new positions are advertised, the committee can automatically retrieve the names of persons who have previously applied and are available for these positions. The committee wants to ensure that these applicants are given as much consideration for the new positions as new applicants. Applicants are informed that, once their application is on file, it will remain active for three years. They are invited to send the committee information about changes in their career or community activities to be added to their file.

4. References and Discreet Inquiries

The committee decided that it did not want candidates to supply written letters of reference. In their experience, the members found that such letters were not very helpful. Almost invariably, they contained fulsome praise for the candidate without really providing much insight into the person's strengths and not a whisper about possible weaknesses. Instead, the committee asks applicants to provide the names of four persons, one of whom should not be a lawyer or judge, whom the committee can contact on a confidential basis. At every stage in the process, committee members have taken every caution and every effort to maintain confidentiality. The committee stipulates that the referees should have up-to-date knowledge of the candidate's professional work or community activity. When the committee first began, it found that some of the persons listed had not been advised by the candidate that their name had been given as a reference. Accordingly, the committee now requests candidates to advise their referees. The committee also writes to each of the referees to give them some background information about the committee and its criteria, and to advise them that a member of the committee may soon telephone them.

The chairperson assigns to each committee member the names of referees to be called. For the most part, the lawyer members call lawyers, Judge Walmsley and Professor Russell call judges and the other lay members call the non-lawyer referees. But this division of labour is not rigid. The committee also tries to have members concentrate their calls in their own region of the province.

The committee's experience with calls to referees is mixed. At first, the committee encountered some reluctance on the part of referees to talk to members of the committee, particularly to lay members. But now that the committee is better known and provides some advance information, the committee is getting better co-operation. Naturally, nearly all who are called are positive about the person who has named them as a referee. Some do more than that and give insightful comments on the particular strengths of the candidate and sometimes even suggest possible weaknesses. Unfortunately, a fair number of candidates submit names of very well known, even famous people who, it turns out, do not appear to know the applicant very well. These calls are not helpful. Since the committee has been sending its criteria to referees, the members have found that some calls lack spontaneity as the referee goes rather mechanically through the list of criteria.

For those candidates who have graduated beyond the first "cut", the committee, in addition to its calls to referees, also makes discreet inquiries through its own sources of information, such as, lawyers or judges whom committee members believe can furnish information on candidates' professional ability and character. This work is divided up among members of the committee, although the burden of it falls primarily on the lawyer and judge members. It is very important wherever possible to obtain these appraisals from a number of lawyers and judges. But the number cannot be too great, otherwise the confidentiality of the applicants' candidacy that the committee undertakes to preserve would be jeopardized. The committee members have about two weeks in which to call referees and make discreet inquiries.

The information the committee has received from these independent sources, who are often leading members of the bar and bench, has been most helpful. Because of the committee's undertaking to treat the information the independent sources give it in confidence, the committee cannot disclose their identity; but would like to thank them here — anonymously.

5. Interviews

When the inquiry process has been completed, the committee meets to share the information that the members have learned through their calls and to agree on a short list of candidates to be interviewed. This meeting usually takes a full day. Deciding which candidates to interview is difficult because, at this

stage, the committee usually has an embarrassment of riches — more excellent candidates than it can possibly interview. Nevertheless, the committee must reduce the list to about three interviews for each position to be filled. Each interview takes about an hour, so that, for five vacancies, there will be fifteen hours of interviewing, which is about the limit of the committee's capacity. Nonetheless, sometimes the committee is persuaded to extend the interview list because it simply cannot justify dropping a particular candidate from consideration at this stage.

After the interview list is drawn up, the candidates listed are notified and interviews are scheduled for about ten days to two weeks hence. Prior to the interviews, the committee's administrative officer asks the Law Society to inform the committee of any disciplinary matters or serious complaints on the candidates' professional records.

The interviews take place back-to-back. Usually they take two days to complete. In its third round of competition, with thirteen positions open, the committee spread the interviewing over four days with two sessions, a month apart.

The interviews are conducted on a confidential basis and the committee takes pains to try to ensure that candidates do not meet each other entering or leaving the interview room. The committee fears it would lose many good candidates if confidentiality were not maintained. Each interview takes forty-five to fifty minutes. All committee members have an opportunity to ask questions, but with seven to ten in attendance, no member can raise more than a few points. The questioning is structured around the committee's criteria. A small portion of the interview concerns the candidate's professional experience as the committee has already obtained a fair amount of information on this from the written application and its telephone calls. More of the interview focusses on candidates' approach to community and legal issues and on their conception of the judicial office. The committee realizes that there is a bit of a "grape-vine" about its interviews, so it has been trying to vary the themes that different members pursue. The committee has also asked the recently appointed judges who have been through its interviews to help the committee in writing hypothetical scenarios that might be introduced into the interview process.

The committee finds the interviews a useful way of augmenting the information obtained from the information forms, the referees and the discreet inquiries. Sometimes they confirm, but often they alter, impressions that have been formed on the basis of the other sources of information. Since the candidates selected for interviews have exceptional qualifications, the main purpose of the interview stage is not to eliminate candidates but to assess their relative merits and rank them. Many of the candidates interviewed, who do not

quite make the top of the committee's lists in one round, are so good that the committee decides to keep them in mind for other appointments in the future. Increasingly as time goes by and there are changes in the membership of the committee, it becomes increasingly difficult to compare candidates who have impressed the committee in earlier interviews with new candidates. To deal with this, the committee has re-interviewed candidates.

6. *Recommendation to the Attorney General*

Immediately following completion of the interviews of candidates for a set of positions, the committee decides on the recommendations that it will make to the Attorney General. The recommendations take the form of ranked lists for each position. Normally two or three persons are recommended for each position.

The committee endeavours, through a sustained and open discussion of the persons whom it has just interviewed and others who impressed it in earlier interviews, to arrive at a consensus. But the committee is not a monolithic body. There are significant differences among the members as to values and priorities. This means that sometimes the committee must agree to disagree about the relative merits of candidates. When this occurs, the committee submits both the majority's ranking and deviations from that ranking to the Attorney General. The committee explains whether the ranking is very close or whether a particular candidate in its view is much better than any other. If the committee was not unanimous, it reports the number of members who supported each ranking but does not disclose how individual members voted. The report takes the form of a confidential letter written by the chairperson to the Attorney General.

The submission of that letter completes the Judicial Appointments Advisory Committee's role in the selection process for that particular group of vacancies. A letter is written thanking the candidates who were interviewed for their participation in the process and asks them for any suggestions on how it might be improved. This has brought the committee some valuable advice. The letter advises them that the recommendations have been submitted to the Attorney General from whom they will hear fairly soon if they are proposed for appointment.

7. *The Attorney General's Response*

The Attorney General has responded to the committee's recommendations quite quickly and within a few days to a week has selected the candidates to be proposed for appointment from the ranked lists. With only one exception, the Attorney General has selected the persons ranked highest by the committee or, where there has been a split, by the majority.

The one exception occurred in unusual circumstances. Because none of the judges serving the particular region could conduct trials in French and there was a significant Francophone population in the area, the Attorney General was determined to appoint a fluently bilingual person to the position. He made this known to the community and to the committee. The committee's first recommendation for this position did not have a fully bilingual person at the top of its list. The Attorney General decided not to appoint any of the persons on this list and asked the committee if it could recommend a strong bilingual candidate. The committee then submitted the name of a bilingual candidate who was highly ranked but when the Attorney General received negative comments on the individual from the Judicial Council, the appointment was not made. The committee then endeavoured to generate some additional applications from bilingual candidates. It interviewed several more candidates and eventually was able to recommend a fully bilingual lawyer with outstanding qualifications who was then appointed to the position.

In two other cases, the committee's top ranked candidate was not appointed. The first instance occurred when the Ontario Judicial Council commented negatively on a second candidate. The other occurred when the top candidate on the committee's list was selected by the Attorney General but then declined the appointment.

8. The Ontario Judicial Council

As explained in Part II of this report, the Ontario Judicial Council continues to play a role in the judicial appointment process. The *Courts Of Justice Act* requires that the Attorney General obtain the Council's "comments" on any person whom he is proposing for appointment to the Provincial Court [now the Ontario Court of Justice (Provincial Division)]. Since the establishment of the Judicial Appointments Advisory Committee, the Attorney General has submitted the name of the person selected from the committee's list to the Council for its advice. The names are submitted in "grey books" along with some basic biographical information. At its next scheduled meeting following receipt of this information, the Council interviews the persons named and then, through its chairperson, the Chief Justice of Ontario, gives its comments to the Attorney General.

Of the thirty names submitted to the Council since the committee's inception, two have been commented on negatively and as a result were not recommended by the Attorney General for appointment by the Lieutenant Governor in Council. Since the Council's comments are given on a confidential basis, they are not available to the committee. Nevertheless, the Chief Justice, without disclosing details, did inform the chairperson of Judicial Appointments Advisory Committee about the general areas of concern.

In fairness to all concerned, the details of these cases should not be discussed in a public report. Suffice it to say that the committee has expressed to the Attorney General its concerns about the accountability of the Ontario Judicial Council in the appointment process. The committee would find it helpful to have some statement of the criteria that the Council applies or perhaps a statement of the Council's views on the Judicial Appointments Advisory Committee's criteria.

9. *The Lieutenant Governor in Council*

Under the *Courts of Justice Act*, provincial judges are formally appointed by the Lieutenant Governor in Council, that is, by the Cabinet. The names of proposed appointees are submitted for Cabinet approval as soon as possible following approval by the Ontario Judicial Council. The Lieutenant Governor in Council has appointed all those selected by the Judicial Appointments Advisory Committee and approved by the Ontario Judicial Council. The committee regards this as another indication of the total absence of political interference in the arrangements now in place in Ontario for appointing judges to the Ontario Court of Justice (Provincial Division).

VIII: CRITERIA

Part of the committee's mandate has been to develop criteria for the selection of provincial judges. The committee began to work on this at its earliest meetings. The academic literature on the subject was consulted. Various members of the committee made proposals. A draft statement was drawn up and circulated to judges and lawyers for comment. The committee now has a statement of criteria that it can employ. This statement is sent to referees and to candidates before their interviews. The committee recently published the criteria along with its advertisement for the fourth round of vacancies. This statement is by no means cast in stone. Through this report, the committee again invites suggestions on how it might be improved.

The current summary statement of the criteria is set out below:

CRITERIA FOR EVALUATING CANDIDATES

☐ Professional Excellence

- A high level of professional achievement in the area(s) of legal work in which the candidate has been engaged. Experience in the field of law relevant to the division of the Provincial Court on which the

applicant wishes to serve is desirable but not essential.

- Involvement in professional activities that keep one up to date with changes in the law and in the administration of justice.
- An interest in or some aptitude for the administrative aspects of a judge's role.
- Good writing and communications skills.

☐ **Community Awareness**

- A commitment to public service.
- Awareness of and an interest in knowing more about the social problems that give rise to cases coming before the courts.
- Sensitivity to changes in social values relating to criminal and family matters.
- Interest in methods of dispute-resolution alternatives to formal adjudication and in community resources available for participating in the disposition of cases.

☐ **Personal Characteristics**

- An absence of pomposity and authoritarian tendencies.
- Respect for the essential dignity of all persons regardless of their circumstances.
- Politeness and consideration for others.
- Moral courage.
- An ability to make decisions.
- Patience and an ability to listen.
- Punctuality — good regular work habits.
- Good health.
- A reputation for integrity and fairness.
- Not involved in serious, unresolved professional complaints, civil actions or outstanding financial claims such as unpaid taxes.

☐ **Demographic**

- The provincial judiciary should be reasonably representative of the population it serves. This requires overcoming the serious under-representation of women and several ethnic and racial minorities.

☐ Career Plans

- The provincial judiciary should be open to those who may wish to serve for a limited number of years and resign before reaching retirement age as well as those who wish to finish their professional career on the bench.

Of course, as with any general set of criteria, much depends on how they are interpreted and applied. Although there are bound to be differences in the way committee members apply these criteria, the committee will try to indicate some principles of interpretation that are followed.

The first point is that the committee is looking for candidates who are excellent in the three basic aspects that it considers: professional achievement, community awareness and personality. For instance, none of the committee members would want to recommend for a judicial appointment a lawyer who, although deeply involved in community activity and of outstanding character, nevertheless was not well regarded by judges and lawyers familiar with the candidate's professional work. By the same token, the committee would not recommend a lawyer with a sterling professional reputation but who demonstrated indifference to the way that courts affect the society they serve and came across as crusty, disdainful and arrogant.

In the professional area, the committee does not have a fixed idea about the degree of specialized expertise required. A lawyer with a great deal of experience and impressive accomplishments in either the field of criminal law or family law would be regarded as a real asset to the Provincial Court bench. But the committee has also placed at the top of its list lawyers who have not had this kind of specialized experience but have given evidence of having very good general legal skills and a real capacity for learning. Now that the two divisions of the Provincial Court have been amalgamated into the Provincial Division of the Ontario Court of Justice, the committee thinks there is an even stronger case for staffing this court with a combination of specialists and generalists.

With regard to community involvement and awareness, the committee recognizes that it would be unreasonable to insist on a high level of participation in community organizations for every candidate who is to be highly recommended. Often there are personal circumstances — for instance, major family responsibilities — that leave little time for volunteer work in the community. What is most important to the committee in this area is evidence of an awareness of and interest in the major social issues on which courts administering criminal justice and dealing with family issues have such an impact. The committee is not looking for pat answers to these issues but it is looking for candidates who are well informed and genuinely concerned about them.

The committee's list of desirable character traits may seem to describe a paragon of virtue to which few could aspire. The committee does not expect all good candidates to have all of these qualities in abundance. At the very least, the committee is on the lookout for indicators of what it calls "judgitis", that is, characteristics of judges that attract the most frequent complaints. Foremost among these is a tendency to get carried away with the power and authority of judicial office and the inability to recognize the difference between dignity and pomposity, or between firmness and arrogance. Of course, no selection process, however meticulous, could examine candidates so closely as to ensure that no one appointed would ever be impatient, intolerant, humourless or dithering. But the committee does think it worthwhile to try as hard as possible to avoid having persons appointed who show clear signs of having some of these qualities that can render even the most brilliant lawyer ill-qualified for the judicial role.

Besides these personal qualities, the committee is also concerned about the representative nature of the Ontario judiciary. The committee believes the judiciary will better serve the community if, in a sociological sense, it is reasonably representative of that community. The committee believes this for two reasons. First, it is important that the perspectives of the various racial and ethnic groups that make up Ontario society, and the outlook and experience of women as well as men should influence how justice is administered. Judges have a great deal of discretion in interpreting and applying the law. In the Ontario Court of Justice (Provincial Division), this is particularly true with regard to sentencing and the resolution of family problems. This discretion will be exercised more effectively and fairly when the judiciary is not dominated by a single race, or ethnic group or gender. Second, the judiciary is likely to be more credible when significant sections of the community do not appear to be excluded from its membership. Judges of the Ontario Court of Justice (Provincial Division) exercise great powers; they can impose years of imprisonment on a citizen and authorize the removal of children from the custody of their parents. Those who are subject to such decisions are likely to have more confidence in their fairness when they see members of their own social group appointed to the court that makes them.

The committee does not pursue the objective of improving the representative nature of the judiciary by setting numerical quotas. Nor does the committee think professional quality or personal aptitude should be sacrificed in order to obtain a more representative judiciary. The committee is on the lookout for outstanding candidates from groups that it has reason to believe are seriously under-represented on the Ontario Court of Justice (Provincial Division). The committee will not, however, recommend a candidate from an under-represented group ahead of one who is not, if the latter, in all other respects, is clearly better qualified.

Finally, one other element of the committee's stated criteria refers to career plans. Here the committee wishes to make it clear that it welcomes applications both from those who would like to serve as a judge until retirement and those who plan a shorter judicial career of, say, five or ten years. The committee has included this point because it was advised by both judges and lawyers about the frequency of judicial "burn-out". The problems with which provincial judges deal, day in and day out, year in and year out, are often difficult and depressing. The committee can understand how, after a decade or two of this, a judge may wish a change of career. Of course, once appointed, there is no legal obligation to resign before retirement age. The Law Society has assured the committee that its rules create no impediment for provincial judges who wish to resign and return to private practice.

IX: JUDGES APPOINTED

Thus far, the Judicial Appointments Advisory Committee has made recommendations to the Attorney General for twenty-nine positions on the Provincial Court. Of these, twenty-eight have resulted in appointments. These judges and their location in the province are listed in Appendix 4.

A few facts and figures about these twenty-eight new Ontario judges indicate that they are quite a varied group. Their age at the time of appointment ranged from thirty-five to fifty-five years with the average just under forty-three years. Nine are women and one is from the black community. Four are fluent in English and French, one in English, French and Portuguese and another in English and German. Eight were Crown attorneys at the time of their appointment (five provincial and three federal), two were doing policy work in the Ministry of the Attorney General, one was a Family Law Commissioner, one was Ontario's Privacy Commissioner, while the other sixteen all came from private practice. All who came from private practice were either sole practitioners or belonged to small firms, the largest having sixteen lawyers.

One other feature of this first batch of appointments is their geographic location at the time of appointment. Fifteen of the twenty-eight already lived in the city or town to which they were appointed, six lived in the surrounding area, while seven others had to be relocated upon appointment. This indicates that the committee has no fixed rule whether or not a provincial judge should come from the community in which she or he would preside.

The proof of the pudding is in the eating: the real test of the new system of judicial selection that the committee has been developing is whether it produces judges who fulfill their responsibilities very well. Of course, having recommended these appointments, the committee is confident that these new judges

will be excellent. Until Ontario adopts procedures for evaluating judicial performance, however, it will not be easy to tell whether the committee's confidence is well placed. A system for evaluating the performance of judges has recently been proposed for Manitoba.⁶ If this system is introduced, it will be the first such system in Canada. The committee hopes that an appropriate, independent body will study judicial evaluation procedures proposed for Manitoba, as well as those used in the United States, and take steps to establish a good system for Ontario. Only then will there be an objective way of assessing a selection system. The committee feels that, if performance review is to shed any light on whether the new selection system is an improvement on the old, it must be applied to judges appointed under both systems.

X: THE COMMITTEE'S FUTURE AND COURT REFORM

In a year and a few months, the three-year experimental period for the Judicial Appointments Advisory Committee will come to an end. It is time now to consider what changes the committee might make in this final stage of its mandate and what should happen at the end of the three-year pilot project.

The committee's procedures and criteria should continue to evolve as is appropriate for a pilot project. The committee hopes that this report will elicit some further suggestions for improvement.

One major change to be considered is a different approach to filling vacancies. Up to now, the committee has directed its work and its recommendations to filling specific positions. The alternative would be to recommend a pool of outstanding candidates (possibly ranked) from which the Attorney General could select candidates for appointment to vacancies as they occur. Instead of an advertisement for specific positions and a new selection round every few months, there might be one advertisement a year and one round of inquiries and interviews. This would bring the Ontario procedures more in line with the way that the British Columbia Judicial Council performs its nominating function. An advantage of this system is that it should mean that there is less delay in filling vacancies. It might also reduce the amount of time required of committee members who, under the existing system, have been annually devoting several weeks, and in the chairperson's case, a month or more, to Judicial Appointments Advisory Committee work. On the other hand, it would produce a less focussed list of recommendations and thereby, arguably, would leave more room for the influence of political patronage in the final selection process. Further, it might make the committee less inclined to take into account qualifications needed for particular locations, such as language skills or a

6. For the proposed Manitoba scheme, see the Manitoba Law Reform Commission, *supra* fn. 3, ch. VIII.

willingness to do a lot of travelling. Against this, however, it could be that, under Phase I of the reorganized court system with the Criminal and Family Divisions joined together to form the Ontario Court of Justice (Provincial Division), appointments should be thought of in more generic terms rather than as appointments to deal with a particular type of law in a particular location. The committee would like to hear from anyone who has views for or against the change discussed in this paragraph.

Phase I of the Ontario Court Reform program is now in place. Under Phase I, all the judges of the Criminal and Family Divisions of the Provincial Court have become judges of the Provincial Division of the Ontario Court of Justice. The other division of the Ontario Court of Justice is the General Division. It is made up of all the judges formerly of the District Court and the High Court. The judges who serve on the General Division have all been appointed and will continue to be appointed by the federal government. These judges can try cases concerning certain very serious criminal and civil matters that the Constitution of Canada reserves for the jurisdiction of federally appointed "superior court" judges. Under the Ontario Government's plan for Phase II of court reform, the two divisions of the Court of Justice will be amalgamated. If this occurs, then all of its judges, including those who try cases now heard in the Provincial Division, will be appointed by the federal government. This is a clear constitutional requirement. So, the question arises, if Phase II goes through, what will be the role of the Ontario Government in selecting judges for the Ontario Court of Justice and, more specifically, what will be the role of Ontario's Judicial Appointments Advisory Committee?

One possibility is that Ontario simply packs up the Judicial Appointments Advisory Committee and all appointments to the Ontario Court of Justice are governed by existing federal procedures. These procedures give the Ontario Government a very slight role in the appointment process. Ontario's Attorney General appoints one member of the five-person advisory committee that advises the federal government on Ontario judicial appointments.⁷ As was pointed out above, this federal advisory committee performs only a review function, not a nominating function. It produces a very large list of the names of persons whom it considers qualified for judicial appointment but gives the federal government no advice on who are the best qualified candidates. This would be supplemented by the federal Minister of Justice's informal consultation with the Ontario Attorney General on federal judicial appointments.

Another possibility that has been suggested would provide a continuing role for the Judicial Appointments Advisory Committee. This is the idea that an Ontario selection process apply to half of the appointments to the Ontario Court of Justice and a federal process apply to the other half. The emphasis

7. For more details, see Part III of this Interim Report, *supra*.

here would have to be on selection, not appointment, as the Constitution reserves the power of appointment of judges exercising superior court responsibilities to the Governor General acting on the advice of federal ministers. Still, it would be possible for the federal and Ontario governments to enter into an informal agreement under which the federal Minister of Justice would ask for an Ontario Government nominee (or short list of nominees) for every other appointment to Ontario's Court of Justice (perhaps also, to Ontario's Court of Appeal). Under such a system, the Attorney General of Ontario could continue to use the Judicial Appointments Advisory Committee to select Ontario's nominees to the Court of Justice.

There is a third possibility that the committee hopes will receive consideration: merging the federal and Ontario advisory committees into a single nominating committee for all Ontario judicial appointments. The composition of a joint nominating committee would have to differ both from that of the Judicial Appointments Advisory Committee and of the federal advisory committees. It would not be acceptable for either government to dominate appointments to a joint committee. Also, if a joint committee were to perform a thorough selection function for the twenty-five to forty positions open each year on the Court of Justice, it would need to have many more members, including more lay members, than now serve on the federal committee.⁸ For those who favour the nominating committee approach, this possibility should commend itself. The committee notes that it is very much in line with proposals submitted to the federal government by the Canadian Bar Association and the Canadian Association of Law Teachers.⁹

Whether or not Phase II of court reform is implemented, a decision must be made on the future of Ontario's Judicial Appointments Advisory Committee before its three-year pilot period runs out at the end of 1991. If the government, the legislature and the people of Ontario are persuaded after this three-year experiment that the province should continue to use a nominating committee like the Judicial Appointments Advisory Committee in selecting its judges, then steps should be taken to establish this committee on a firm statutory footing.

XI: CONCLUSION

The committee would like to conclude by stating the respect that we have come to have for the process in which we have been involved. Each of us accepted the appointment to the Judicial Appointments Advisory Committee

8. The total of the new Ontario Court of Justice after amalgamation of its two divisions should be around 443 (233 from the Provincial Division and 210 from the General Division).

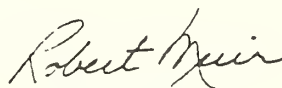
9. See Jacob Ziegel: "Federal Judicial Appointments in Canada — The Time is Ripe for Reform" (1987), 37 *Univ. Tor. L.J.* 1.

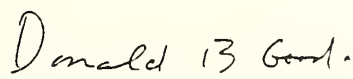
with some uncertainty about what it might entail. We have found that being a member of the Judicial Appointments Advisory Committee involves a lot of work. But we have also come to believe that this work is important and worthwhile. Evidence of this can be seen in the remarkably high attendance rate of all members, including those who must travel a considerable distance to attend meetings. In our meetings, it is clear that each of us speaks from a different kind of experience and with different concerns about the justice system. This has often led to vigorous debates and discussions about the merits of candidates. We think that this is as it should be and have come to trust the process that leaves each of us free to speak our minds knowing that we will be heard but knowing also that, at the end, no one will be pressured into joining a consensus.


We are sure that there is plenty of room for improving on what the Judicial Appointments Advisory Committee has done in the first two thirds of its mandate. But we are also sure that some of what we have done is a step in the right direction. We hope this report will encourage those who are concerned about improving the administration of justice in Ontario to take what is useful and positive in our experiment and build on this a more permanent system to ensure that what has been gained for the people of Ontario in this step forward is not lost.


All of which is submitted by:

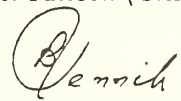

Thomas Bastedo


Robert Muir


Donald B. Good

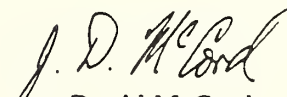

Peter Russell (Chair)



Valerie Kasurak


Ben Sennik


Denise Korpan


Kay Sigurjonsson


David McCord


Judge Robert Walmsley

APPENDIX 1

A PROFILE OF THE JUDICIAL APPOINTMENTS ADVISORY COMMITTEE MEMBERS

CHAIRPERSON

Peter Russell, Toronto

Mr. Russell is a professor of Political Science and Director of Graduate Studies for the Department of Political Science at the University of Toronto. A Rhodes Scholar and Officer of the Order of Canada with a distinguished list of academic and professional credits, Mr. Russell served on the Legal Aid Committee of Ontario and as a research advisor for the Canadian Bar Association Committee on the Appointment of Judges. He has authored numerous books and articles on the judiciary and the constitution including: *The Judiciary in Canada — The Third Branch of Government*; *The Supreme Court in the Eighties*; and *Federalism and the Charter*.

MEMBERS

Thomas Bastedo, Toronto

Called to the Bar in 1971, Mr. Bastedo is a partner in the law firm of Bastedo, Cooper and Shostack. Mr. Bastedo's practice is confined to matrimonial work, except for some employment as a labour and family law mediator and arbitrator. He has been an instructor and lecturer for numerous law courses, conferences and seminars. Mr. Bastedo has participated in many family law related activities including being a founding director of Justice for Children and of the Ontario Association for Family Mediation. He is a former chair of the Family Law Section of the Ontario Branch of the Canadian Bar Association and the Family Law Section of the Canadian Bar Association. Mr. Bastedo is a bencher of the Law Society of Upper Canada and has served as the chair of the Clinic Funding Committee (former). Currently, he is the chair of the Legal Aid Committee, and the chair of the Family Law Speciality Committee, Certification Board and is a member of various standing and special committees. Mr. Bastedo represents the Law Society on the Judicial Appointments Advisory Committee.

Donald Good, Kingston:

Called to the Ontario Bar in 1952, Mr. Good started his career practising in St. Catharines and then moved to Kingston where he is now a partner in the law firm Good and Elliott. Mr. Good was active in the community, serving as the

city alderman, member of the Public Utilities Commission and the Board for the Kingston Public Library. He is currently a member of the Council of the Canadian Bar Association and is their representative on the Committee.

Valerie Kasurak, Windsor

Ms. Kasurak has a distinguished career of public service as a former citizenship judge, and a past member of the Ontario Human Rights Commission, the Advisory Committee on the Canada Pension Plan, University of Windsor Board of Governors and Ontario Press Council. Ms. Kasurak is currently a member of the Institute of Chartered Accountants Discipline Committee.

Denise Korpan, London

Called to the Ontario Bar in 1981, Ms. Korpan practises family litigation with the firm of Siskind, Cromarty, Ivey and Dowler. She is also an instructor at the Bar Admissions Course in London for the Law Society of Upper Canada. She was selected as the Attorney General's lawyer-representative on the Committee.

The Reverend Dr. David McCord, Ottawa

A former penitentiary chaplain, Rev. Dr. David McCord founded the Church Council on Justice and Corrections and served as its executive director for ten years. The Council, made up of criminal justice practitioners from all levels of the system representing ten national churches, is primarily concerned with policy analysis and research and the development of community based educational resources for local programming and animation. Church Council members are regularly called upon by government officials for consultation on the development legislation, programmes and policy initiatives. They also resource church committees dealing with various aspects of Canadian criminal justice.

Robert Muir, Kenora

Mr. Muir is executive director of the Lake-of-the-Woods District General Hospital, and past executive director of the Kenora-Rainy River District Health Council. He has worked on behalf of the health-care system in Canada, applying his administrative skills as a member of the Manitoba Delegation on the Federal-Provincial Negotiating Committee for Health Cost Sharing, special assistant to the Minister of Health and Social Development in Manitoba, and Chairman of the Implementation Team for Children's Dental Programme, also in Manitoba.

Ben Sennik, North York

Born in Nairobi, Kenya, and educated in the United Kingdom, Mr. Sennik moved to Canada in 1975 and established corporate headquarters for the family business. Desbro Investments operates thirty manufacturing, distribution and investment companies around the world, with interests in real estate, steel, industrial chemicals and engineering products. Mr. Sennik devotes much of his spare time to performing community and social work. He is president of the Toronto Organization for the Promotion of Indian Culture, and member of the Board of Trustees of the United Way of Greater Toronto.

Kay Sigurjonsson, Toronto

Kay Sigurjonsson is associate executive director of the Federation of Women Teachers' Association of Ontario. Her career has included teaching at the secondary and university levels, journalism, collective bargaining and pay equity, public relations, political action, administrative and executive responsibilities. Ms. Sigurjonsson's interests include women's, children's and native issues, civil liberties and human rights, the Charter of Rights and social legislation.

Judge Robert Walmsley, Toronto

Judge Walmsley was called to the Bar in 1955 and started his legal career as a partner in a law firm in Picton, Ontario. He also acted as a part-time judge in the eastern region and was appointed a provincial judge in August, 1968. He was subsequently appointed as the senior judge for Eastern Region and then the Associate Chief Judge of the Provincial Court (Family Division). Judge Walmsley is the representative on the Committee nominated by the Ontario Judicial Council.

APPENDIX 2

ADVERTISEMENTS FOR PROVINCIAL JUDGESHIPS



PROVINCIAL COURT JUDGE

The Attorney General has appointed the Judicial Appointments Advisory Committee to advise on the appointment of Ontario Provincial Court Judges.

The Committee invites applications for the position of Provincial Court Judge in the following areas:

1. Criminal Division, District of Algoma, Elliot Lake area
This is a bilingual position.
2. Criminal Division, District of Norfolk, Simcoe area.
3. Family Division, Peterborough/Cobourg/Lindsay areas.
4. Criminal Division, District of Ottawa-Carleton, Ottawa area.
5. Criminal Division, District of Ottawa-Carleton, Ottawa area. This is a bilingual position.

These positions may involve travel to other locations as designated by the Chief Judge.

If you wish to apply, please call or write to obtain an application form from:

Judicial Appointments Advisory Committee
720 Bay Street, 2nd Floor
Toronto, Ontario
M5G 2K1
(416) 326-4060

The minimum requirement to be a Provincial Court Judge in Ontario is ten-year membership at the Bar of one of the Provinces of Canada.

The Judicial Appointments Advisory Committee is seeking candidates who will reflect the diversity of Ontario's people.

Applications must be submitted by: May 8, 1989.



PROVINCIAL COURT JUDGE

The Attorney General has appointed the Judicial Appointments Advisory Committee to advise on the appointment of Ontario Provincial Court Judges.

The Committee invites applications for the position of Provincial Court Judge in the following areas:

1. Criminal Division, County of Middlesex, London Area.
2. Criminal/Family Divisions, District of Rainy River, Town of Fort Frances.
3. Criminal Division, Metropolitan Toronto Area, (Three Positions).

These positions may involve travel to other locations as designated by the Chief Judge.

If you wish to apply, please call or write to obtain an application form from:

Judicial Appointments Advisory Committee
720 Bay Street, 2nd Floor
Toronto, Ontario
M5G 2K1
(416) 326-4060

If you have previously submitted an application form with the Advisory Committee stating interest in any of these areas, you need not reapply. Your application will be automatically reviewed.

The minimum requirement to be a Provincial Court Judge in Ontario is ten-year membership at the Bar of one of the Provinces of Canada.

The Judicial Appointments Advisory Committee is seeking candidates who will reflect the diversity of Ontario's people.

Applications must be received by: August 14, 1989.



PROVINCIAL COURT JUDGE

The Attorney General has appointed the Judicial Appointments Advisory Committee to advise on the appointment of Ontario Provincial Court Judges.

The Committee invites applications for the position of Provincial Court Judge (Criminal Division) in the following areas:

1. Barrie, County of Simcoe.
2. Brampton, Judicial District of Peel.
3. Hamilton, Judicial District of Hamilton-Wentworth.
4. Kitchener, Judicial District of Waterloo.
5. Metropolitan Toronto, Judicial District of York.
6. Oshawa, Judicial District of Durham.

These positions may involve travel to other locations as designated by the Chief Judge.

The Committee also invites applications for the position of Provincial Court Judge (Criminal Division) in the following areas:

7. A position based in Dryden, District of Kenora, serving various communities in Northwestern Ontario, involving travel by road and light aircraft.
8. A position based in St. Catharines serving communities in the Niagara Area.

The Committee invites applications for the position of Provincial Court Judge (Family Division) in the following area:

9. A position based in Metropolitan Toronto with responsibility for hearing cases where needed in all parts of the Province.

If you wish to apply, please call or write to obtain an application form from:

Judicial Appointments Advisory Committee
720 Bay Street, 2nd Floor
Toronto, Ontario
M5G 2K1
(416) 326-4060

If you have previously submitted an application form with the Advisory Committee stating interest in any of these areas, you need not reapply. Your application will be automatically reviewed. If you wish to update an application currently on file, please send revisions in writing to the above-noted address.

The minimum requirement to be a Provincial Court Judge in Ontario is ten-year membership at the Bar of one of the Provinces of Canada.

The Judicial Appointments Advisory Committee is seeking candidates who will reflect the diversity of Ontario's people.

Applications must be submitted by: November 17, 1989.



PROVINCIAL COURT JUDGE

The Attorney General has appointed the Judicial Appointments Advisory Committee to advise on the appointment of Ontario Provincial Court Judges.

The Committee invites applications for the position of Provincial Court Judge in the following areas:

- (1) Criminal/Family Divisions, Brockville, United Counties of Leeds and Grenville.
- (2) Criminal/Family Divisions, Morrisburg and Satellite Courts, which will involve extensive travel, for relief purposes, in Eastern Ontario up to and including Durham.
- (3) Criminal Division, Metropolitan Toronto.

These positions may involve travel to other locations as designated by the Chief Judge.

If you wish to apply, please call or write to obtain an application form from:

Judicial Appointments Advisory Committee
720 Bay Street, 2nd Floor
Toronto, Ontario
M5G 2K1
(416) 326-4060

If you have previously submitted an application form with the Advisory Committee stating interest in any of these areas, you need not reapply. Your application will be automatically reviewed. If you wish to update an application currently on file, please send revisions in writing to the above-noted address.

The minimum requirement to be a Provincial Court Judge in Ontario is ten-year membership at the Bar of one of the Provinces of Canada.

The Judicial Appointments Advisory Committee is seeking candidates who will reflect the diversity of Ontario's people.

Applications must be received by: May 1, 1990.

APPENDIX 3

PERSONAL INFORMATION FORMS



Ontario

JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

The Judicial Appointments Advisory Committee welcomes the interest of qualified persons wishing to be considered for appointment to the position of Judge of the Provincial Court of Ontario.

The Committee's responsibility is to recommend to the Attorney General those persons it considers best qualified to fill vacancies occurring in the Provincial Court. The Committee asks anyone who is interested in being considered for an appointment to complete the attached Judicial Candidate Information Form. If adequate space has not been provided for any item, please attach the additional information on extra sheets. The completed form should be sent to:

The Secretary,
Judicial Appointments Advisory Committee,
720 Bay Street, 2nd Floor,
Toronto, Ontario, M5G 2K1.

The Committee does not require any reference letters at this time, but please provide the names of four referees. Your referees should include one or more persons who have had direct and recent experience with your participation in community activities and one or more who have had direct and recent experience with your professional work. Please be advised that some of your referees will possibly be contacted by members of the Committee.

All information will be kept in confidence by the Committee. The Committee may wish to obtain information from other sources. In making these inquiries, every effort will be made to maintain confidentiality.



Judicial
Appointments
Advisory Committee

JUDICIAL CANDIDATE INFORMATION FORM

THIS APPLICATION MUST BE TYPED

1. Personal Information:

Name: _____

Residential address: _____

_____ Phone No. _____

Business address: _____

_____ Phone No. _____

Sex: _____ Date of Birth: _____

Date and Province of call to bar: _____

Languages spoken or written other than English (indicate level of proficiency)

Locations in which you would prefer to serve

Other locations in which you would be willing to serve

Division of Provincial Court (Civil, Criminal, Family) in which you wish to serve

Other Divisions in which you would be willing to serve

2. Professional and Employment Experience

In chronological order give a brief account of each position you have held. For each position indicate the years you held it and describe the general nature of the work you did and the experience you gained.

3. Community and Civic Activities

Give an account of any community or civic activities in which you have been involved outside of those associated with the legal profession. The Committee is particularly interested in activities which in your view shed light on your suitability for a judicial appointment.

4. Participation in Professional Associations

Provide information on your involvement in any professional associations, including those associated with the legal profession, in which you have been more than a fee paying member (e.g. serving on committees, holding an executive position).

5. Publications

The publications you list here need not be confined to writings on legal topics.

6. Personal Suitability:

Are there any personal difficulties, such as past or present health problems or outstanding civil claims, which would be considered in the public interest for the Committee to be apprised of in the event that you were appointed to the bench.

7. Career Goals and Personal Development

- (i) Please explain why you are interested in serving on the Provincial Court at this stage in your career and indicate how long you would like to serve on the bench if you were appointed

-
- (ii) What aspects of your education, experience and character would most assist you in discharging the responsibilities of a judge?

8. Education:

(a) Secondary school - name and location of schools attended:

(b) University other than law school:

(i) name/location from/to degree/diploma

major subject(s) _____

extracurricular activities _____

awards _____

(ii) name/location from/to degree/diploma

major subject(s) _____

extracurricular activities _____

awards _____

(c) Law School:

name/location from/to degree

area(s) of special interest _____

extracurricular activities _____

awards _____

(d) Post Graduate Studies in Law:

name/location of institution from/to degree

focus of study _____

(e) Continuing Education After Call to Bar

courses taken _____

REFEREES — INCLUDE ADDRESS AND TELEPHONE NUMBERS

The Committee does not require any reference letters at this time, but please provide the names of four referees. Your referees should include one or more persons who have had direct and recent experience with your participation in community activities and one or more who have had direct and recent experience with your professional work. Please be advised that some of your referees will possibly be contacted by members of the Committee.

All information will be kept in confidence by the Committee. The Committee may wish to obtain information from other sources. In making these inquiries, every effort will be made to maintain confidentiality.

Please specify whether your referees are "Law-related" or "other" and provide both their residential and business telephone numbers.

1. _____

2. _____

3. _____

4. _____



COMITÉ CONSULTATIF SUR LES NOMINATIONS À LA MAGISTRATURE

Le Comité consultatif sur les nominations à la magistrature encourage les personnes qualifiées à présenter leur candidature à un siège de juge de la Cour provinciale de l'Ontario.

La responsabilité du Comité est de recommander au Procureur général les candidats qu'il considère les mieux qualifiés pour combler les vacances à la Cour provinciale. Le Comité demande à toute personne intéressée par une charge judiciaire à remplir la Formule de renseignements sur le candidat à la magistrature. S'il n'y a pas assez d'espace, veuillez utiliser des feuilles supplémentaires. La formule doit être dûment remplie et envoyée au:

Secrétaire,
Comité consultatif sur les nominations
à la magistrature,
720, rue Bay, 2^e étage,
Toronto (Ontario) M5G 2K1.

Le Comité ne demande pas de lettres de référence pour le moment. Veuillez nous donner toutefois les noms de quatre références. Celles-ci doivent inclure le nom d'une ou de plusieurs personnes qui ont eu une expérience directe et récente de votre participation aux activités communautaires et le nom d'une ou de plusieurs personnes qui ont eu une expérience directe et récente de votre travail professionnel. Veuillez noter que les membres du Comité communiqueront probablement avec certaines de vos références.

Tous les renseignements sont confidentiels. Le Comité peut demander des renseignements d'autres sources. En faisant ces demandes, tous les efforts seront faits pour respecter le caractère confidentiel de l'information.



Comité consultatif
sur les nominations
à la magistrature

FORMULE DE RENSEIGNEMENTS SUR LE CANDIDAT À LA MAGISTRATURE

VEUILLEZ TAPER À LA MACHINE

1. Renseignements personnels:

Nom: _____

Adresse (résidence): _____

_____ No de téléphone: _____

Adresse (bureau): _____

_____ No de téléphone: _____

Sexe: _____ Date de naissance: _____

Reçu(e) au barreau le: _____ Dans la province de: _____

Langues parlées ou écrites autres que l'anglais (indiquez le niveau de compétence):

Lieux de travail préférés:

Autres régions où vous seriez disposé(e) à travailler:

Division de la Cour provinciale (civile, criminelle, famille) où vous aimeriez travailler:

Autres divisions où vous seriez disposé(e) à travailler:

2. Expérience professionnelle

Donnez, par ordre chronologique, un bref résumé de chaque poste que vous avez occupé. Indiquez les années pendant lesquelles vous avez occupé chaque poste et précisez la nature générale du travail que vous avez fait et l'expérience que vous avez acquise.

3. Activités civiques et communautaires

Donnez un résumé de chaque activité civique ou communautaire à laquelle vous avez participé, à part celles qui sont reliées à la profession juridique. Le Comité est particulièrement intéressé par les activités qui, selon vous, démontrent que vous êtes le candidat idéal pour une nomination à la magistrature.

4. Participation à des associations professionnelles

Donnez les renseignements relatifs à votre participation à toute association professionnelle, y compris celles du domaine juridique, et où vous avez été plus qu'un membre cotisant (par exemple: membre de comités, poste cadre).

5. Publications

Vous pouvez mentionner les publications dans un domaine autre que le droit.

6. Adaptabilité personnelle:

Y a-t-il des difficultés personnelles ou des circonstances professionnelles, comme une mauvaise santé ou des poursuites civiles non réglées, que le comité devrait connaître, dans l'intérêt public, au cas où vous seriez nommé(e) à la magistrature?

7. Objectifs de carrière et perfectionnement personnel

- (i) Veuillez expliquer pourquoi vous êtes intéressé(e) à siéger à la Cour provinciale à cette étape de votre carrière et indiquez la durée souhaitée de vos fonctions à la magistrature, si vous y étiez nommé(e).

-
- (ii) Quels aspects de votre formation, de votre expérience et de votre caractère vous aideraient le plus à assumer vos responsabilités à titre de juge?

8. Formation:

(a) École secondaire - nom et lieu des écoles fréquentées:

(b) Université autre que la faculté de droit:

(i) nom et lieu

de/à

licence/diplôme

spécialisation(s) _____

activités parascolaires _____

bourses _____

(ii) nom/lieu

de/à

licence/diplôme

spécialisation(s) _____

activités parascolaires _____

bourses _____

(c) École de droit

nom et lieu

de/à

diplôme

domaines d'intérêt particulier _____

activités parascolaires _____

bourses _____

(d) Études en droit de troisième cycle:

nom et lieu de l'établissement

de/à

diplôme

sujet de l'étude _____

(e) Formation permanente après avoir été reçu(e) au barreau

cours suivis _____

RÉFÉRENCES AVEC ADRESSES ET NOS DE TÉLÉPHONE

Le comité ne demande pas de lettres de référence pour le moment. Veuillez nous donner toutefois les noms de quatre références. Celles-ci doivent inclure le nom d'une ou de plusieurs personnes qui ont eu une expérience directe et récente de votre participation aux activités communautaires et le nom ou d'une de plusieurs personnes qui ont eu une expérience directe et récente de votre travail professionnel. Veuillez noter que les membres du Comité communiqueront probablement avec certaines de vos références.

Tous les renseignements sont confidentiels. Le Comité peut demander des renseignements d'autres sources. En faisant ces demandes, tous les efforts seront faits pour respecter le caractère confidentiel de l'information. Veuillez préciser si les personnes que vous donnez comme références oeuvrent dans le "domaine juridique" ou "autre" et indiquez leurs numéros de téléphone au bureau et à domicile.

1. _____

2. _____

3. _____

4. _____

APPENDIX 4

APPOINTMENTS MADE SINCE THE INCEPTION OF THE JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

Name	Location	Division	Effective Date
Anderson, Charles	Brockville	Criminal/Family	15 August 1990
Baig, Dianne	Rainy River/Fort Frances	Criminal/Family	2 April 1990
Bonkalo, Annemarie	Brampton	Criminal	2 April 1990
Bovard, Joseph	Metropolitan Toronto	Criminal	31 December 1989
Crawford, James	Oshawa	Criminal	1 June 1990
de Sousa, Maria	Ottawa	Criminal	4 July 1989
Flaherty, Roderick	Dryden	Criminal	2 April 1990
Glaude, Normand	Elloitt Lake/Algoma*	Criminal	17 April 1990
Hatton, Mary Jane	Metropolitan Toronto	Family	2 April 1990
Knazan, Brent	Metropolitan Toronto	Criminal	15 August 1990
Lenz, Kenneth	Simcoe/Norfolk	Criminal	4 July 1989
Linden, Sidney B.	Metropolitan Toronto	Criminal	25 April 1990
Lindsay, Eric S.	Metropolitan Toronto	Criminal	1 September 1990
Livingstone, Deborah	London	Criminal	31 December 1989
MacPhee, Bruce	Brampton	Criminal	2 April 1990
Main, Robert	Barrie	Criminal	2 April 1990
Masse, Rommel	Ottawa*	Criminal	4 July 1989
McGowan, Kathleen	St. Catharines	Criminal	1 June 1990
Morgan, J. Rhys	Metropolitan Toronto	Criminal	15 August 1990
Newton, Petra	Metropolitan Toronto	Criminal	31 December 1989
Ormston, Edward	Metropolitan Toronto	Criminal	31 December 1989
Reinhardt, Paul	Metropolitan Toronto	Criminal	2 April 1990
Robson, M. Wendy	Peterborough	Family	4 July 1989
Shamai, Rebecca	Brampton	Criminal	2 April 1990
Stone, David	Oshawa	Criminal	1 June 1990
Westman, Colin	Kitchener	Criminal	1 June 1990
Wolder, Theo	Brampton	Criminal	1 June 1990
Zabel, Bernd E.	Hamilton	Criminal	2 April 1990

* denotes bilingual position

